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| 09/780,603 | 02/12/2001 | Kirt E. Whiteside | WHS.P0018A | 8458 |

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EXAMINER

RESTIFO, JEFFREY J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3618

DATE MAILED: 07/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/780,603

Applicant(s)

WHITESIDE, KIRT E.

Examiner

Jeffrey J. Restifo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Acknowledgments

1. Acknowledgment is made of the amendment filed 4/21/03.

Claim Objections

2. Claims 7-13 and 16-19 are objected to because of the following informalities: In claim 7, line 9, the recitation of "harness" appears to be a typo and should be changed to "hardness". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 7-8, 13, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry (5,863,053) and in further view of Bonzer et al. (4,559,669).

With respect to claims 1 and 2, Berry discloses a creeper 10 comprising opposed side rails 18, 22, a pad 34 between said side rails, and a plurality of casters 28a-b, 30 attached to a planar bottom surface of said side rails, as shown in figures 1-3. Berry does not disclose the caster wheel as having a radial surface in which only 50-75% of the width of the caster wheel contacts the support surface. Bonzer does disclose a caster assembly 10 being rotatable about a vertical axis 20 and having a wheel 18 with a hub 45 with axle bore 46, an inner rim "I", an outer rim "O", radial supports "R", and a curved outer surface 69 allowing only 50 percent of the radial surface to make contact

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with the ground, as shown in figures 1-4. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the creeper of Berry with the caster assembly of Bonzer et al., in order to allow the creeper to turn with less force exerted by a user due to less friction between the wheel and support surface.

With respect to the newly added limitation of claim 1, the shape of the Bonzer et al. wheel body would not "substantially" change when viewed as a whole, otherwise it would not roll, so the hardness limitation is inherently met by the caster of the Bonzer et al. reference.

With respect to claims 7-8, 13, and 16-19, Berry discloses a creeper 10 comprising side rails 18, 22, a pad 34, a plurality of casters 28a-b, 30 with wheels, as shown in figures 1-3. Berry does not disclose the wheel assembly as having a bearing bracket or top race, or having a semi-elliptical cross section. Bonzer et al. does disclose a caster assembly 10 having a semi-elliptical wheel body 69, a wheel hub 80 with an axle bore 46, an inner rim "I", outer rim "O", radial supports "R", a top bearing bracket 23 with top race for top rolling elements 22, a bottom bearing bracket 26 with a bottom race for bottom rolling elements 25, a kingpin 21, and rivet nuts 15, as shown in figures 1-4, wherein said top bearing bracket could be placed within the vertical profile of the side rails of the Berry creeper. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the creeper of Berry with the caster assembly of Bonzer et al., in order to allow the casters to rotate vertically to decrease the turning radius of the creeper.

With respect to the limitations in claim 7 concerning the shape of the side rail cross section, the shape of the side rail cross section is not patentable unless it produces an unexpected result, see In re Dailey, 149 USPQ 47 (CCPA 1976). Further, with respect to the newly added limitation of claim 7, the shape of the Bonzer et al. wheel body would not "substantially" change when viewed as a whole, otherwise it would not roll, so the hardness limitation is inherently met by the caster of the Bonzer et al. reference.

5. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry and Bonzer et al., as applied to claims 2 and 8 above, and further in view of Hook (5,692,809).

Neither Berry nor Bonzer et al. disclose the axle bore as having bearings. Hook discloses a wheel 10 with axle bore 64 with bearings 50A,B, as shown in figure 3 for decreasing the amount of friction between the axle and axle bore. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the creeper of Berry and modified by Bonzer et al., with the axle bore bearings of Hook in order to decrease the amount of friction between the axle and axle bores when the wheels are rotating.

6. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry, Bonzer et al., and Hook, as applied to claims 1 and 9 above, and further in view of Doyle et al. (4,707,880).

None of Berry, Bonzer et al., or Hook disclose the wheel assembly as being selected from the recited materials. Doyle et al. does disclose a caster wheel 28

composed of polyurethane, as recited in column 3, lines 28-29. It would have been obvious to one having ordinary skill in the art at the time of the invention to have composed the caster wheel, as taught by Berry, Bonzer et al., and Hook, out of polyurethane, as taught by Doyle et al., in order to give the wheel increased durability and decreased weight.

7. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry and Bonzer et al., as applied to claims 1 and 7 above, and further in view of Doyle et al. (4,707,880).

Neither Berry nor Bonzer et al. disclose the wheel assembly as being selected from the recited materials. Doyle et al. does disclose a caster wheel 28 composed of polyurethane, as recited in column 3, lines 28-29. It would have been obvious to one having ordinary skill in the art at the time of the invention to have composed the caster wheel, as taught by Happ and Bonzer et al., out of polyurethane, as taught by Doyle et al., in order to give the wheel increased durability and decreased weight.

8. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry, Bonzer et al., and Doyle et al., as applied to claims 5 and 11 above, and further in view of Block (4,034,434).

None of Berry, Hook, or Doyle et al. disclose the wheel as having a hardness of 65-85 Shore durometer type D. Block does disclose a wheel 66 having a hardness of 65/75 Shore D Durometer, as recited in column 3, line 65. It would have been obvious to one having ordinary skill in the art at the time of the invention was to have designed

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the wheel, as taught by Berry, Bonzer et al., and Doyle et al., with a hardness of 65/75

Shore D Durometer in order to prevent wear on the wheel.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-2, 7-8, 13, and 16-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 and 19-25 of copending Application No. 09/523,469 in view of Bonzer (4,559,669).

Application 09/523,469 claims a creeper with a side rails having a planar bottom and downward tapering upper surface with rounded sides, and a plurality of casters mounted to the bottom surface of the side rails and not extending past the side surfaces of the side rails. Application 09/523,469 does not disclose the caster wheels as having a radial surface in which only 50-75% of the width of the caster wheel contacts the support surface. Bonzer does disclose a caster assembly 10 being rotatable about a vertical axis 20 and having a wheel 18 with a hub 45 with axle bore 46, an inner rim "I",

an outer rim "O", radial supports "R", and a curved outer surface 69 allowing only 50 percent of the radial surface to make contact with the ground, as shown in figures 1-4.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the creeper as claimed in Application 09/523,469 with the caster assembly of Bonzer et al., in order to allow the creeper to turn with less force exerted by a user due to less friction between the wheel and support surface.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

11. Applicant's arguments filed 4/21/03 have been fully considered but they are not persuasive. With respect to the applicant's arguments concerning the hardness of the casters, the added limitation of "with a hardness such that when in normal use the shape of said wheel body remains substantially unchanged." does not define over the prior art because a user's weight, which is variable, would determine the amount of compression the casters would be under and further, the term "substantially" is open to interpretation and the examiner believes that the caster of Bonzer et al. does remain unchanged when viewed as a whole. For these reasons the rejections stand.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heise discloses a stretcher of interest.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

15. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

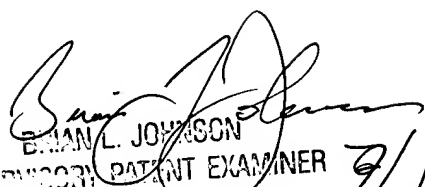
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JJR

July 2, 2003

Jeffrey J. Restifo
Examiner
Art Unit 3618



BRIAN L. JOHNSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600 7/3/03